

D.T.E. 01-35-A

Investigation by the Department on its own motion as to the propriety of the rates and charges of Astro Water Supply, as set forth in M.D.T.E. No. 3, filed March 20, 2001, to become effective April 15, 2001.

APPEARANCES: Elmer Wing, President
Astro Water Supply
P.O. Box 862
Lakeville, Massachusetts 02347
FOR: ASTRO WATER SUPPLY
Petitioner

On March 20, 2001, Astro Water Supply (“Astro” or “Company”), pursuant to G.L. c. 164, § 94 and G.L. c. 165, § 2, filed new rates and charges with the Department of Telecommunications and Energy (“Department”), seeking an emergency rate increase of \$20,090, or approximately 113.1 percent. The Department docketed the petition as D.T.E. 01-35.

The Company is a small seasonal operation supplying 120 customers in the Clarks Shore section of the Town of Lakeville. In March of 2001, Astro was informed by the Massachusetts Department of Environmental Protection that unless specific remedial measures were taken, the Company would not be permitted to open for the 2001 season. In order to prevent a disruption of service to Astro’s ratepayers, on March 26, 2001, the Department granted the Company interim rate relief of \$20,090. Astro Water Supply, D.T.E. 01-35, at 2-5 (2001). In order to comply with the notice and hearing requirements of G.L. c. 164, § 94, as applicable to water companies pursuant to G.L. c. 165, § 2, the rate relief was granted on an interim basis, pending the results of our investigation in D.T.E. 01-35. Id. at 5.

On September 18, 2002, Astro notified the Department that the Clark Shores Water Realty Trust had purchased its assets on April 8, 2002, and was now operating under the name Clark Shores Water Corporation (“CSW”). CSW is a nonprofit organization formed by the trustees of the Clark Shores Association¹ (“Association”) to operate the water system on behalf of the Association and its members.

Water supply systems organized under a trust-type arrangement do not meet the definition of a water “company or corporation” for purposes of G.L. c. 165, § 1, provided all

¹ Clark Shores Association is a homeowner association representing year-round and seasonal residents in the Clark Shores area.

of the users of the water system are beneficiaries of the trust. Pond Meadows Water Trust, Advisory Opinion D.P.U. No. 80-1, at 4-6 (1980). Such water trusts are considered beyond the scope of the Department's review. In this case, the users of the water system are beneficiaries of CSW by way of their membership in the Association. There is no evidence to indicate that non-Association members will ever become customers of CWS. Therefore, we determine that CSW is not a water company subject to our regulatory jurisdiction.

Insofar as the Company is no longer in operation and CSW does not constitute a water system under the Department's jurisdiction, we find that further proceedings in this matter are no longer necessary. Accordingly, after due consideration, it is

ORDERED: That the Department's investigation in D.T.E. 01-35 is closed.

By Order of the Department,

Paul B. Vasington, Chairman

James Connelly, Commissioner

W. Robert Keating, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

Appeals as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).